United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

74-1244

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

No. 73-8331

B

P/S

ORT MORTORO

VS. Appellant

JOHN C. MANSON, Commissioner of Corrections for the State of Connecticut Appellee

---

Appeal from the United States District Court for the District of Connecticut, Clarie, J., and its Ruling dated July 17, 1973 dismissing Appellant's Petition for Writ of Habeas Corpus

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BRIEF AND APPENDIX FOR APPELLANT, ORT MORTORO

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UNITED STATES COURT OF APPEALS
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Statutes Involved

UNITED STATES CONSTITUTION -

AMENDMENT XIV

Section 1. ...nor shall any State deprive any person of life, liberty, or property, without due process of law...

CONNECTICUT GENERAL STATUTES -

Section 54-63(f). Release after conviction and pending sentence or appeal

A person who has been convicted of any offense and is either awaiting sentence or has given oral or written notice of his intention to appeal or file a petition for certification or a writ of certiorari may be released pending final disposition of the case, unless the court finds custody to be necessary to provide reasonable assurance of his appearance in court, upon the first of the following conditions of release found sufficient by the court to provide such assurance: (1) Upon his execution of a written promise to appear, (2) upon his execution of a bond without surety in no greater amount than necessary, (3) upon his execution of a bond with surety in no greater amount than necessary.

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UNITED STATES COURT OF APPEALS

Second Circuit

ORT MORTORO	:	
	:	
VS.	:	NO. 73-8331
	:	
JOHN C. MANSON, Commissioner of Corrections for the State of Connecticut	:	BRIEF FOR APPELLANT

ISSUE

DOES THE REFUSAL BY THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT TO DIRECT THE APPROPRIATE CONNECTICUT COURTS TO ADMIT THE APPELLANT TO BAIL PENDING DETERMINATION OF HIS STATE COURT APPEAL CONSTITUE A DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW AND A DENIAL OF EQUAL PROTECTION UNDER THE LAW, BOTH IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

STATEMENT OF THE CASE

On February 8, 1973, the Appellant was convicted in a State Court in Connecticut of being an accessory to an attempted sale of narcotics. He had previously - on July 2, 1968 - been convicted of the same crime, but that decision had been reversed by the Supreme Court of Connecticut on February 16, 1971 and a new trial ordered.

At all times between April 10, 1968, when appellant was originally arrested for the subject offense, and February 8, 1973, appellant had been free on bail. The amount of such bail was $5,000.00 until after the July 2, 1968 conviction. Appeal bond was originally set at $15,000.00 and was later reduced to $13,500.00.

On February 8, 1973, appellant was sentenced to a term of not less than 5 nor more than 7 years, to be served at the Connecticut Correctional Institution at Somers, Connecticut, where he has been incarcerated ever since. At the end of the sentencing hearing, appellant gave notice of his intention to appeal the conviction and moved the court to admit him to bail while his appeal

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was pending. The court denied this request without hearing any evidence concerning appellant's qualifications vel non as a suitable risk for admission to bail pending appeal. On February 26, 1973, the court gave its reasons for denying such bail in a "Direction of Service of Sentence", a copy of which is attached to the Brief filed in the District Court and is part of the Record in this Appeal.

On May 14, 1973 the appellant filed a motion in the Supreme Court of Connecticut asking review of the above-described decision by the trial court to deny bail pending appeal. Said motion was denied without hearing and without any written memorandum of decision on June 12, 1973.

Having thus exhausted his state remedies on the question of bail pending appeal, appellant filed in the United States District Court for the District of Connecticut a Petition for Writ of Habeas Corpus, dated June 22, 1973, which has previously been made part of the Record herein. On July 16, 1973, a hearing on said Petition was held in the District Court at which appellant testified and during which oral argument was offered by counsel on both sides. Counsel for the petitioner-appellant outlined the authority presented in his brief in support of said Petition. Counsel for the respondent Commissioner of Corrections for the State of Connecticut presented an argument in opposition but cited no substantive authority contra to that briefed by opposing counsel. Petitioner, on his own request, was sworn and testified under both direct and cross-examination and in response to the questioning of the Court. Petitioner expressed his feeling that his family and business ties with the community in which he made his home, his lack of any previous record in drug-related crimes, and his favorable 5-year record while on bail were considerations

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favoring post-conviction admission to bail. The State, through cross-examination and argument, suggested that when arrested for the present offense Mortoro was free on bond pending appeal of another case (involving a different offense), that at one time he was convicted of adultery, that in the present case the drugs for the attempted sale of which he was an accomplice were dangerous, and that the State of Connecticut feels his pending Appeal in the State Supreme Court lacks substantial merit.

On July 17, 1973, the Court filed its ruling, a copy of which has been made a part of the Record in this Appeal, denying the relief sought and dismissing the Petition. The Court made no independent findings of fact; nor, indeed, had it been asked to. Rather, the Court expressed its feeling that the State trial judge must have been fully aware of the kinds of background information presented to the Federal Court at the July 16 hearing and that, considering such awareness, the State Court's denial of bail pending appeal did not constitute an unconstitutional abuse of discretion.

Judgment in accordance with the ruling of July 17 entered on August 3, 1973 and petitioner thereafter filed his Notice of Appeal thereof and his Application for a Certificate of Probable Cause for Appeal on August 9, 1973. Said Application was granted and was transmitted on September 26, 1973 by the Clerk of the District Court for Connecticut to the Clerk of the Court of Appeals for the Second Circuit where it was duly filed and became part of the Record in the present appeal.

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ARGUMENT

THE REFUSAL BY THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT TO DIRECT THE APPROPRIATE CONNECTICUT COURTS TO ADMIT THE APPELLANT TO BAIL PENDING DETERMINATION OF HIS STATE COURT APPEAL CONSTITUTES A DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW AND A DENIAL OF EQUAL PROTECTION UNDER THE LAW, BOTH IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

INTRODUCTION

The brief submitted by Appellant in the District Court outlines the statutory and case law in Connecticut covering granting of bail pending appeal. In summary, the only statute involved provides that a person convicted "may be released pending final disposition of the case, unless the court finds custody to be necessary to provide reasonable assurance of his appearance in court..." Connecticut General Statutes, Section 54-63(f); and the cases offer no specific criteria for release or detention. The matter is considered, as in other jurisdictions, almost entirely dependent on the sound exercise of judicial discretion.

A. IT WAS BOTH IMPROPER UNDER THE STRUCTURE OF OUR COURT SYSTEM AND INCORRECT ON THE FACTS FOR THE STATE TRIAL COURT TO HOLD THAT ANY APPEAL OF PETITIONER'S CONVICTION WAS FRIVOLOUS AND TAKEN ONLY FOR THE PURPOSE OF DELAY.

First, where there is need for a decision as to whether an appeal is frivolous, which court-trial or appellate - should make the determination?/ In Herzog v. United States, 75 S.Ct. 359, 99 L. Ed. 1299, the United States Supreme Court was considering a petition for the granting of bail pending appeal which had been denied by both the trial court and the Circuit Court of Appeals. Although it acknowledged the importance of the greater proximity to the evidence which a trial court enjoys over an appellate forum, the court thought itself to be the appropriate body to decide so sensitive a question as whether, on a given record, an appeal could get by the "frivolous" test and thereby qualify the appel-

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lant for bail. And a fuller treatment of this question is contained in United States vs. Ursini, 276 F. Supp. 993 (D.C. 1967). There, the Government had moved immediately after obtaining a conviction in the trial court that the defendants be held without bail pending appeal on the ground that the appeal would be frivolous. The court granted the motion but refused to base its decision even in part on a finding that the appeals would be frivolous:

> I believe it is more appropriately within the competence of a reviewing court, than of the trial court, to judge, for purposes of bail, the degree of substance presented by the appeals. 276 F. Supp. at 998.

This would appear to be nothing more than affirmation of the common sense notion that an objective view of an area of disagreement between a convicted defendant and the judge of the court which convicted him can be had only in a higher court, on review.

Next, even if the trial court were the proper body to decide the question of merit vel non in the appeal, there could be no basis for holding the appeal here to be frivolous. There has previously been a successful appeal in this case in which the Supreme Court of Connecticut found it necessary to rule on only one of petitioner's several assignments of error. With the one proven fatal defect cured, the State of Connecticut has now presented substantially the same case. Can it be said that the present appeal is taken only for the purpose of delay when there still exist several grounds for appeal which have not been ruled on only because another of the grounds was alone sufficient to require reversal?

The general rule, stated in Herzog, supra, is that, at least with respect to deciding whether or not to grant bail pending appeal, the benefit of any doubt accrues to the appellant:

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> There is room for argument on many rules of law and on most of their applications. The shadow of a doubt across one's own conclusions is itself sufficient, at least where bail is involved. Bail is basic to our system....Doubts whether it should be granted or denied should always be resolved in favor of the defendant. See the opinion of Mr. Justice Butler as Circuit Justice in United States v. Motlow, 7 Cir., 10 F. 2d 657, 663 (emphasis added) 75 S. Ct. at 351.

In United States v. Motlow, 10 F. 2d 657 (7th Cir. 1926), cited above in the passage from Herzog, the Circuit Court of Appeals overturned a decision of the trial court denying bail pending appeal. On the proceedings before the reviewing court, the Government contended that: (1) In order to overturn the denial of bail by the trial court, the defendants have to show that said denial was an abuse of judicial discretion, and (2) that the appeals being taken were frivolous and only for the purpose of delay. But the court held that bail pending appeal should be granted if the appeal appears to be taken in good faith, with advice of counsel, and without undue delay, unless the prosecution can produce substantial facts showing that these tests have not been satisfied.

In a more recent case, Harris v. United States, 404 U. S. 1232, 92 S.Ct. 10, 30 L. Ed. 2d 25 (1971), the United States Supreme Court added to the general due process basis the Eighth Amendment to the United States Constitution as further ground for considering questions of post-conviction bail with extreme sensitivity. There, Mr. Justice Douglas was sitting as Circuit Judge for the Court of Appeals for the Ninth Circuit. The case came before him on application of a defendant convicted of a narcotics offense for bail pending appeal, which application had been denied by the trial court.

> "'The command of the Eighth Amendment that "Excessive bail shall not be required..." at the very least obligates judges passing on the right to bail to deny such relief only for the strongest of reasons.' Sellers, supra" (referring to Sellers v. United States, 89 S.Ct. 36, 21 L. Ed. 2d 64 (1968) (emphasis supplied). 92 S.Ct. at 12.

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In this case the District Court, in its ruling on the Petition for Habeas Corpus, did not deal directly with the above-cited authorities, even its own rather clear language in Ursini, supra; rather, the Court indicated indirectly its feeling that it was proper for the State trial judge to pass on the merit of the appeal for the purposes of post-conviction bail by citing as one reason for finding no abuse of discretion the fact that the State trial judge "was aware of.... the apparent frivolous appeal of the second jury conviction on substantially the same evidence." Ruling on Petition for a Writ of Habeas Corpus, p. 3. And, although the Court cited two cases dealing generally with bail pending appeal, neither appears to deal in any way with the question of which forum, trial or appellate, should review the merits of the appeal in connection with consideration of such relief.

B. PETITIONER HAS BEEN DENIED THE DUE PROCESS OF LAW IN THAT THE STATE TRIAL COURT FAILED TO PROVIDE A SOUND RATIONAL BASIS FOR ITS DENIAL OF BAIL PENDING APPEAL.

It would seem in any case where bail pending appeal is denied that the very minimum requirement of the trial judge, in order to supply due process of law, is that he set down with some specificity the reasons for his decision.

In Weaver v. United States, 405 F. 2d 353 (D.C. Cir. 1968), the court reversed the district court's denial of bail pending appeal because the trial judge had not supplied written grounds for his decision. The court further held that, in so denying bail, a trial judge should not only indicate what ground he is using for his decision, but should indicate the reason or reasons that such a ground exists. For example: "If he deems the appeal frivolous, he should state the considerations, legal and factual, which led him to that conclusion." 405 F. 2d at 354.

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In the present case, when the question of bail pending appeal was raised at the sentencing hearing, the trial court reacted only with the following remarks:

1. "It seems upon the second conviction it is postponing the awful truth." (Transcript of Hearing on Motion to Set Aside the Verdict and Sentencing, p. 20 - attached to the District Court Brief.)

2. "There is no absolute right to an appeal bond in this state. In view of the fact of two convictions, I think the Court at this time will refuse to set an appeal bond." (Transcript of Hearing on Motion to Set Aside the Verdict and Sentencing, p. 21 - attached as above.)

(The later "Direction of Service of Sentence" referred to above added nothing but merely recited that "(t)his second appeal is deemed to be only for the purpose of delay.")

Why is the appeal no more than a postponement of the "awful truth"? Why are the grounds for appeal so lacking in merit that the trial court feels compelled to deny bail to a man who has been free on bond ever since 1968, has never failed to make a court appearance, and who previously won an appeal against substantially the same case which the State has now presented for a second time? The trial court - even if it were adjudged to be the proper forum for a decision on bail pending appeal - failed to provide a sound rational basis in fact for its action, and such a basis is emphatically required by the Herzog case and others.

C. NOT ONLY DID THE TRIAL COURT FAIL TO SPECIFY A BASIS FOR ITS DENIAL OF BAIL, BUT THERE IS IN FACT NO BASIS ANYWHERE IN THE RECORD FOR BELIEF THAT BAIL PENDING APPEAL SHOULD BE REFUSED BECAUSE OF A DANGER THAT PETITIONER MIGHT FLEE THE JURISDICTION, OR BECAUSE HE MIGHT POSE A DANGER TO THE COMMUNITY, OR FOR ANY OTHER REASON.

Appellant suggests that the Federal District Court, when it made its decision in this case, did not have before it enough of whatever the state trial court's ratio decidendis was to decide whether or not the holding falls within the bounds of judicial discretion. In this situation, it would seem that the District

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Court had to do one of the following: (1) rule that, as a matter of law, the state court decision was to be treated as constitutionally sufficient despite its pithiness; or (2) conduct its own plenary hearing of the facts concerning the crime and the personal history of the defendant and make its own determination of whether or not appellant should be admitted to bail. But the District Court did neither of these things. While it did entertain the testimony of the petitioner and in fact asked several questions of him, the Court make clear in its Ruling previously made part of the Record herein, that it was not making its own determination of whether or not bail should be granted. Rather, the Court held in effect that, since there had apparently been many facts before the state trial court which are material to a consideration of post-conviction bail, that court must have had good reasons to deny it, whether such reasons were stated or not. Appellant strongly urges that this is fatally weak, constitutionally deficient jurisprudence.

Even if the District Court had accepted the challenge to make its own determination as to whether bail should be granted, it simply could not have found facts justifying the denial of bail. The Petitioner here, Ort Mortoro, has lived in Norwich, Connecticut since 1926. Before his incarceration in this case he owned a restaurant and some commercial real estate in Norwich and has been active in their management. He was living with his wife of twenty-eight years and their two sons in a home owned by the wife. He served in the United States Army in World War II for three years and received an honorable discharge. His criminal record in its entirety includes no history of crimes of violence nor, with the exception of the conviction now being appealed from,

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any record of dealings in narcotics. Defendant was on bail from the date of the original arrest in this case in 1968 until the date of sentencing and did not miss a single court appearance. And the state trial court, when it commented on its decision to deny bail, cited no concern that petitioner might flee the jurisdiction, nor that his freedom might represent a danger to the community. Indeed, if facts supportive of such a position had been in existence, it is hard to imagine why the trial court would have permitted petitioner to be free on bail even before his conviction.

The District Court which denied relief to this appellant has explicitly recognized that "only in an extraordinary case should bail pending appeal be denied..." United States v. Ursini, 276 F. Supp. 993, 997 (1967). That case, in which the Court denied bail pending appeal, provides an important contrast to the facts presently considered; the Court made its decision only after finding that:

1. The nature and circumstances of the offense were particularly aggravated.

2. Both defendants had extensive records of serious violations of the law;

3. During the trial on the present charges, defendant Ursini attempted to physically attack a Government witness who was testifying;

4. All of the key witnesses for the government lived in the same area in which both defendants lived;

5. During the trial, one of the key witnesses received a number of phone calls threatening his life.

It is strongly urged that the factual history of this case and the criminal record of petitioner fail to even approach the gravity of the factual background present in Ursini.

The nature of crime involved and petitioner's criminal record deserve special attention in this connection as obviously not every defendant convicted of a drug-related offense is denied bail pending appeal. The offense here - accessory to an attempted

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sale - is hardly one of the most serious in its class. In addition, it is the only drug-related offense in which appellant has been involved.

In Harris v. United States, supra, a case involving a substantial quantity of narcotics, Mr. Justice Douglas, as Circuit Justice for the Ninth Circuit, emphasized that to justify the denial of bail pending appeal on the ground of probable danger to the community, there must be a far stronger showing of such danger than is made by a mere description of the serious narcotics offense involved.

And finally, in Chambers v. Mississippi, 405 U. S. 1205, 92 S. Ct. 754, 30 L. Ed. 2d 773 (1971), Mr. Justice Powell, sitting as Circuit Justice of the Court of Appeals for the Fifth Circuit was asked by the State of Mississippi to reconsider his previous granting of an application for bail pending consideration of petitioner's petition for writ of certiorari. The Attorney General of Mississippi relied principally on the contention that petitioner's "return to the community will create a dangerous situation to citizens of that community." But there, even though petitioner had been convicted of murder and although the State claimed his return would lead to bloodshed, the Court found a factual history which it felt assured the safety of the community. There, as is true of Ort Mortoro, the petitioner had lived in the community almost all his life; again like Mortoro, he owned a home and had a wife and family in the community; and finally, like petitioner Mortoro he had been free on bail for a substantial period of time previous to his conviction without incident. "On this record," concluded the Court, "I am unable to conclude that petitioner's mere presence in the community poses such a threat to the public 'that the only way to protect against it would be

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to keep (him) in jail.' Sellers v. United States, 89 S.Ct. 36, 38 21 L.Ed.2d 64, 67 (1968) (Black, J., in Chambers)." 405 U.S. at 1206. See also Sica v. United States, 82 S.Ct. 669 (1962).

CONCLUSION

Appellant is being illegally and unconstitutionally deprived of his liberty in that he was and is incarcerated after being refused bail pending his appeal of a criminal conviction without any rational basis for such a refusal, and consequently in violation of his rights to the due process of law under the Fourteenth Amendment to the Constitution.

This Court should order that the Appellee Commissioner of Corrections take whatever steps are necessary to secure appellant's release on bail pending the prosecution of his appeal, on surety or other appropriate terms no more stringent than those required before the conviction.

APPELLANT

By Richard R. Stewart
RICHARD R. STEWART
His Attorney

and C. Thomas Furniss
C. THOMAS FURNISS
on the Brief

This will certify that a copy of this brief has been mailed to Edmund O'Brien, State's Attorney for New London County, Connecticut

Richard R. Stewart
RICHARD R. STEWART

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

* * * * * * * * * * * * * * * * * * * *

ORT MORTORO *

vs. * CIVIL ACTION

JOHN C. MANSON, Commissioner of Corrections for the State of Connecticut * H-84

* JULY 16, 1973

* * * * * * * * * * * * * * * * * * * *

Before: HON. T. EMMET CLARIE, U.S.D.J.

TESTIMONY OF ORT MORTORO

Appearances:

For the Petitioner:

C. THOMAS FURNISS, ESQ.
750 Main Street
Hartford, Connecticut

For the Respondent:

EDMUND W. O'BRIEN, ESQ.
State's Attorney
New London, Connecticut

ORT MORTORO, appearing as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your full name?

THE WITNESS: Ort Mortoro.

DIRECT EXAMINATION BY MR. FURNISS:

Q Mr. Mortoro, as you and I spoke earlier, I think I will ask you only about those aspects of your personal history that you feel are relevant to his Honor's determination.

Would you briefly describe what you do in business in Norwich, your interest, very briefly?

A I have a restaurant and real estate business.

Q Do you own a home in Norwich?

A Yes, I own my own home.

Q Who lives with you now?

A My wife and two sons.

Q Do you have business interests that are now active?

A We have. I have some land that I was in the process of developing, and since this happened, I just didn't do it; couldn't do it.

Q Would you tell his Honor very briefly what you mentioned to me about this conviction that Mr. O'Brien brought up, the intimidation of a witness?

A Your Honor, I was in court, and one of the Defendants' wives was there, and said to me "Please don't let the Defendant say anything abusive to me."

So I sat down with her, about six rows from the front.

Now, this witness is a person of around 18 years old, and many times I help him by giving him clothes, giving him food. And I knew him very well. He was a young kid of 18, and he was hanging around, sleeping in back rooms of restaurants and stuff, because I was in the coin machine business at the time.

And the only words I said, as he went by, he said to this woman -- he swore at her. And I said "Billy, I don't forget. Remember that." Meaning all the good I did him, I don't forget, remember that. Those are the five words I said.

That was the intimidation of a witness. I never came in contact with him, and never went near him, and never had anything to do with him. That is the reason I was convicted, for saying those five words.

Q Mr. Mortoro, finally, would you tell his Honor, in whatever way you feel appropriate, why you think bail would be appropriate for you while you are on appeal?

A Your Honor, I have a wife; I am 55 years old. My wife is 52. And I thought I was going to get an appeal bond and finish the land that I have, and one restaurant I already leased out, because I was incarcerated.

I have two sons at home, and my wife right now is not too -- she's very insecure.

THE COURT: How old are the sons?

THE WITNESS: One is 26, and the other just graduated from W.P.I. He's 22.

The one, 26, has two years of college. He went to Viet Nam, and he tried to go to college, to finish his other two years.

I own my own home in Norwich. I lived there since 1926. And I was three years in the Army. I served overseas two years. I was honorably discharged.

I would like to bring up one point, your Honor, if I can -- if I am out of line, you stop me.

I lived in Norwich since 1926. I was in the coin vending business. And in 1966, I got out of that business, at great loss, because of the association with the people you come in contact with.

And I sold it, took a big loss, and went into the restaurant business. And I bought property. And it seems since I bought the property -- well, now, in our trial, I just want to mention briefly, every State Police officer that got on the stand was asked a question: "Have you ever known Mortoro to deal, sell, push, use, or anything?" This is in the transcript. And every single one of them -- some of them with twelve to fourteen years' experience -- have all

said never have they ever heard of me in any way having anything to do with narcotics.

THE COURT: Were these character witnesses that you put on?

THE WITNESS: No, these were State Police officers.

THE COURT: Prosecution witnesses?

THE WITNESS: Yes, sir, State Police officers. We asked each and every one.

Also, I'm going to mention this: The Federal Bureau of Investigation in -- and this can be proven by the transcript, and Mr. O'Brien also went to New Haven to the Federal Bureau of Investigation to find out -- they came to me in 1954, to determine something about machines and all that. Anyway, I have helped them out throughout the years.

Then in 1966 or '67, when this happened with Eddie David -- one thing that Mr. O'Brien didn't mention, Eddie David has been a police informer since 1952. Mr. O'Brien knows this; there is a record of it. He was told to call me up on the phone, because he was in trouble, and see if I would introduce him to this Joseph Harb.

When this happened, sir, your Honor, I went to the Federal Bureau of Investigation and told them that Eddie David called me. I did not know it was

tapped, but I told them what happened.

Several weeks later, he came in with a bug on him, and I immediately told Agent Thomas Murphy of the Federal Bureau of Investigation that this man came to me again.

After that, I did not see hair nor hide of Mr. Eddie David.

THE COURT: All this came out at your trial?

THE WITNESS: That's right, the first trial.

THE COURT: So the jury had that before them?

THE WITNESS: Yes, sir, the first trial. And the Federal Bureau of Investigation says "You will come up and talk in front of a Judge, but you cannot talk in open court." Those are the rules and regulations. But, they have admitted the part I have done for them.

I would never have talked to Eddie David. I would never -- because outside of those two times, I had nothing to do with Eddie David. And the reason why they said to me if he comes down again, let us know, because there were many bank robberies in that area, and they wanted to know who handled money. Because I was in a position of going around --

THE COURT: All of this came out before the jury, didn't it?

THE WITNESS: In the first trial.

THE COURT: How about the second trial?

THE WITNESS: No, it didn't.

THE COURT: Did you have the same attorney?

THE WITNESS: Yes, I did. But, the second trial, sir, one of the witnesses was dead. And I was willing to take a polygraph test, or anything they wanted to do.

But, the State's Attorney insinuated that I might have something to do with the man. I never have. I never seen the man but twice in my life.

THE COURT: What was his name?

THE WITNESS: Edward David.

Now, the other fellow lived in Norwich. I don't even go near him. I work -- I have been working seven days a week in real estate, and as a mechanic on coin vending machines.

THE COURT: This Eddie David is to whom you issued those five words; is that right?

THE WITNESS: No, no, sir.

THE COURT: I want that clear. Who did you say that to?

THE WITNESS: It was in a different case, where I went away for a year to three.

THE COURT: Who was that?

THE WITNESS: That was Desamond. I said this to a fellow named Dailey -- but Desamond's wife was sitting next to me.

I have two children, and my brother has children, and I think personally, if I knew somebody was dealing in drugs, I would turn them in. That was the reason I told the FBI what I was doing.

And outside of those two times, I never had anything to do with it.

And Agent Thomas Murphy said he would appear in front of a Judge, to give his statement.

THE COURT: Of course, you know, don't you, that your attorney could subpoena any agents of the FBI?

THE WITNESS: They won't come. We had them, your Honor -- we had them in the first court, and he refused to talk.

THE COURT: I wasn't there, so I don't know. They are subject to subpoena, like any other witness.

THE WITNESS: He wouldn't come.

MR. FURNISS: Okay, I have no further questions, your Honor.

THE COURT: Is there anything else you want to add?

THE WITNESS: Your Honor, I never failed to

appear in court. Many times I have gone to court and had to wait all day, and then they told me to go home. I never failed to appear in court. I have never jumped a bond. And I work every day of the week. And I stay in the City of Norwich.

And whatever restrictions they want to put on me, I would be more than -- when my time comes to serve my time, I will do it. That is an obligation that I have to do. Then I will do it.

But, I think that I deserve an appeal bond, as well as the other one. But, if I am wrong, then I don't deserve it.

THE COURT: All right. Are there any questions that you want to ask of the witness, Counselor?

CROSS-EXAMINATION BY MR. O'BRIEN:

Q Mr. Mortoro, you applied to this Court, did you not, for the appointment of an attorney, so that you could proceed as a pauper?

A Yes. No -- yes, go ahead, I am sorry.

Q Isn't it a fact, Mr. Mortoro, that this property that you refer to is not in your name at all?

A It is in my wife's name.

Q So that when you say that you own a home in Norwich, your wife owns a home in Norwich?

A Yes.

Q With respect to the business property, you don't own it; your wife owns it?

A Yes, sir.

Q Along with Attorney Horwitz; is that correct?

A He's the trustee.

Q So that in your name, there is no property in Norwich?

A That's right.

Q Didn't you appear down in court since your incarceration, in defense of a civil suit, for commissions?

A Yes, as an agent.

Q The agent was seeking a commission?

A In the real estate deal, yes.

Q At that time, did you testify?

A Yes, I did.

Q And did you testify in effect that you didn't own the property?

A Yes, sir.

Q So that is consistent with your reply at this time that you don't own the property?

A No. My wife would gladly sign anything --

Q That would help you?

A Mr. O'Brien, the reason why I drew that writ for a habeas corpus is because my attorney -- I wanted them to do something, because after eleven weeks they still had not done anything. And I --

Q But you did represent at one time to this Court that you were a pauper?

A Actually, I have never stated I was a pauper.

Q In effect, if your wife didn't hand that property back to you, you would be, wouldn't you?

A No.

MR. O'BRIEN: All right. That is argumentative -- that's all.

THE COURT: Anything else that you want to add, Mr. Mortoro?

THE WITNESS: The only thing I want to add, your Honor, I know that it is a privilege to be on bond, bail bond. And whatever break you can give me, by letting me go out on a bail bond, I would appreciate it.

I know one thing: I will never, never run away. I will make sure that I appear at any court. And when the time comes, and I have to do my time, I would do it, knowing that it is an obligation that I have.

Any help you can give me, your Honor, I would appreciate.

THE COURT: Do you represent that you are in a position to make a substantial bond?

THE WITNESS: Yes, I can make a bond. I would